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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF MISSOURI
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12 THE UNITED STATES OF AMERICA,)
13)
14 Plaintiff,) No.: 2:18-cv-04133
15)
16 v.)
17) CIVIL COMPLAINT
18 MFA Incorporated,)
19 and MFA Enterprises, Incorporated)
20)
21 Defendants.)
22 _____)
23

24 The United States of America, by authority of the Attorney General and through the
25 undersigned attorneys, acting at the request of the Administrator of the United States
26 Environmental Protection Agency (“EPA”), files this complaint seeking injunctive relief and
27 civil penalties and alleges as follows:

28 NATURE OF THIS ACTION

29 1. This is a civil action brought pursuant to Section 113(b)(2) of the Clean Air Act
30 (“the Act”), 42 U.S.C. § 7413(b)(2), against MFA Inc. and MFA Enterprises, Inc. (collectively,
31 the “Defendants”) for their violations of Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7).

32 JURISDICTION AND VENUE

33 2. This Court has jurisdiction over the subject matter of this action pursuant to

1 Section 113(b) of the Act, 42 U.S.C. § 7413(b), and pursuant to 28 U.S.C. §§ 1331, 1345, and
2 1355. The Court has personal jurisdiction over the parties.

3 3. Venue is proper in the Western District of Missouri pursuant to Section 113(b) of
4 the Act, 42 U.S.C. § 7413(b), and pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1395(a) because
5 the Defendants are doing business within the district and a substantial part of the events giving
6 rise to the claims occurred within the district.

7 4. Authority to bring a civil action is vested in the Attorney General of the United
8 States pursuant to Sections 113(b) and 305 of the Act, 42 U.S.C. §§ 7413(b) and 7605, and 28
9 U.S.C. §§ 516 and 519.

10 NOTICE TO THE STATE OF MISSOURI

11 5. The United States has notified the State of Missouri of the commencement of this
12 action pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b).

13 PARTIES

14 6. Plaintiff is the United States of America, acting at the request of the EPA, an
15 agency of the United States.

16 7. Defendant MFA Inc. is a corporation organized and existing under the laws of the
17 State of Missouri and is doing business in this judicial district.

18 8. MFA Inc. is an agricultural cooperative that owns and operates more than 140
19 retail farm supply centers throughout Missouri.

20 9. Defendant MFA Enterprises, Inc. is a corporation organized and existing under
21 the laws of the State of Missouri and is doing business in this judicial district.

22 10. MFA Enterprises, Inc. is a wholly-owned subsidiary of MFA Inc.

23 11. Defendants are each a “person” within the meaning of Section 302(e) of the Act,

1 42 U.S.C. § 7602(e).

2 12. Defendants own and/or operate the facilities that are the subject of this Complaint
3 within the meaning of Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9),

4 STATUTORY AND REGULATORY BACKGROUND

5 13. The Clean Air Act establishes a regulatory scheme designed to protect and
6 enhance the quality of the nation's air so as to promote the public health and welfare and the
7 productive capacity of its population. 42 U.S.C. § 7401(b)(1).

8 14. The Clean Air Act requires the Administrator of the EPA to, among other things,
9 promulgate programs and regulations intended to prevent accidental releases of regulated
10 substances and to minimize the consequences of any such releases that do occur. 42 U.S.C.
11 § 7412(r)(1).

12 15. Sections 112(r)(3) and (7) of the Act, 42 U.S.C. §7412(r)(3) and (7), authorize the
13 Administrator of EPA to, among other things, promulgate a list of regulated substances with
14 threshold quantities and regulations applicable to the owner or operator of stationary sources at
15 which a regulated substance is present in more than a threshold quantity. These regulations
16 address release prevention, detection, and correction requirements for regulated substances and
17 require a prompt emergency response to any such releases in order to protect human health and
18 the environment.

19 16. EPA promulgated regulations to implement Section 112(r)(7), codified at 40
20 C.F.R. Part 68, that require owners and operators of stationary sources that have more than a
21 threshold quantity of a regulated substance in a process to develop and implement a risk
22 management program, to be described in a Risk Management Plan ("RMP"). The RMP is to be
23 submitted to EPA and includes, among other things, a management system, a hazard assessment,

1 and a prevention program.

2 17. 40 C.F.R. § 68.3 defines “owner or operator” as “any person who owns, leases,
3 operates, controls, or supervises a stationary source.”

4 18. Section 112(r)(2)(C) of the Act, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3
5 define a “stationary source” as any buildings, structures, equipment, installations, or substance
6 emitting stationary activities which belong to the same industrial group, are located on one or
7 more contiguous properties, are under the control of the same person, and from which an
8 accidental release may occur.

9 19. Section 112(r)(2)(A), 42 U.S.C. § 7412(r)(2)(A), defines “accidental release” as
10 an unanticipated emission of a regulated substance into the ambient air from a stationary source.

11 20. 40 C.F.R. § 68.3 defines “process” to mean “any activity involving a regulated
12 substance including any use, storage, manufacturing, handling, or on-site movement of such
13 substances, or any combination of these activities.” “Covered process” means “a process that
14 has a regulated hazardous substance present in more than a threshold quantity as determined
15 under [40 C.F.R.] § 68.115.”

16 21. The regulations at 40 C.F.R. Part 68 separate covered processes into three
17 categories, designated as Program 1, Program 2, and Program 3, and set forth specific
18 requirements for owners and operators of stationary sources with processes that fall within the
19 respective programs.

20 22. Pursuant to 40 C.F.R. § 68.10(c), a covered process is subject to Program 2
21 requirements if it does not meet one or more of the Program 1 eligibility requirements set forth in
22 40 C.F.R. § 68.10(b) and the process is not subject to Program 3 requirements because it is not
23 listed in one of the specific North American Industry Classification System codes found in 40

1 C.F.R. § 68.10(d)(1) or is not subject to the United States Occupational Safety and Health
2 Administration (OSHA) process safety management standard set forth in 29 C.F.R. § 1910.119.

3 23. Pursuant to 40 C.F.R. § 68.12(c), the owner or operator of a stationary source
4 with a process subject to Program 2 prevention requirements must undertake certain tasks,
5 including but not limited to:

6 a. developing and implementing a management system, as provided in 40 C.F.R.
7 § 68.15;

8 b. conducting a hazard assessment to assess a worst-case release scenario, as
9 provided in 40 C.F.R. §§ 68.20-68.42;

10 c. implementing either the Program 2 prevention requirements provided in 40 C.F.R.
11 §§ 68.48-68.60, including safety information, hazard reviews, operating
12 procedures, training, maintenance, compliance audits, and incident investigations,
13 or the Program 3 requirements provided in 40 C.F.R. §§ 68.65-68.87;

14 d. developing and implementing an emergency response program as provided in 40
15 C.F.R. §§ 68.90-68.95; and

16 e. submitting as part of its RMP the data on prevention program elements for
17 Program 2 processes as provided in 40 C.F.R. § 68.170.

18 24. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), the Administrator
19 may commence a civil action against any person that is the owner or operator of a covered
20 source to obtain civil penalties and a permanent or temporary injunction whenever such person
21 violated or is violating any requirement or prohibition of the Act, including the requirements of
22 Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and its implementing regulations, including 40 C.F.R.
23 Part 68.

25. Section 113(b) of the Act, 42 U.S.C. § 7413(b), as modified by the Debt Collection Improvements Act of 1996, 31 U.S.C. § 3701, as implemented by the Civil Monetary Penalties Inflation Rule, 40 C.F.R. Part 19, establishes maximum civil penalties for violations of the CAA. The maximum civil penalty per day per violation of the CAA is \$37,500 for violations occurring after January 12, 2009 and on or before November 2, 2015, and effective January 16, 2018, \$97,229 per day per violation of the CAA for violations occurring after November 2, 2015. 42 U.S.C. § 7413(b) and 40 C.F.R. § 19.4.

GENERAL ALLEGATIONS

26. Anhydrous ammonia is listed as an extremely hazardous substance pursuant to Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), and its implementing regulations, 40 C.F.R. § 68.130.

27. Anhydrous ammonia is a colorless, highly irritating gas with a sharp, suffocating odor. Symptoms of human exposure to anhydrous ammonia include burning of the eyes, nose and throat after breathing even small amounts. With higher doses, coughing or choking may occur. Exposure to high levels of anhydrous ammonia can cause death from a swollen throat or from chemical burns to the lungs.

28. For the purposes of Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), the threshold quantity of anhydrous ammonia is listed at 10,000 pounds. 40 C.F.R. § 68.3.

29. Anhydrous ammonia storage vessels involve a regulated substance in storage, manufacturing, or handling, and constitute a covered “process” as defined by 40 C.F.R. § 68.3.

30. The following facilities (collectively, “MFA facilities”) are the subject of this action.

- a) The Centralia facility or Facility One located at 22501 North March Road, Centralia, Missouri;
- b) The Rock Port facility or Facility Two located at 17287 W. Hwy 136, Rock Port, Missouri.
- c) The Pattonsburg Facility or Facility Three located at 18563 U.S. Hwy. 69, Pattonsburg, Missouri.
- d) The Hale facility or Facility Four located at 3049 J. Highway, Hale, Missouri.
- e) The Saint Joseph facility or Facility Five located at 2715 South Sixth Street, St. Joseph, Missouri.
- f) The Jefferson City facility or Facility Six located at 1009 Fourth Street, Jefferson City, Missouri
- g) The Rich Hill facility or Facility Seven located at 700 E. Walnut, Rich Hill, Missouri
- h) The New Cambria facility or Facility Eight located at 29400 Colony Ave., New Cambria, Missouri.
- i) The Martinsburg facility or Facility Nine located at 15778 Audrain Road 741, Martinsburg, Missouri.

31. At all relevant times, MFA Inc. has been and continues to be the “owner and/or operator” within the meaning of Section 112(a)(9) of CAA of the Centralia (Facility One), Pattonsburg (Facility Three), Hale (Facility Four), Saint Joseph (Facility Five), Jefferson City (Facility Six), New Cambria (Facility Eight) and Martinsburg (Facility Nine) facilities mentioned in Paragraph 30.

32. At all relevant times, MFA Enterprises, Inc. has owned, and continues to own, the Rock Port (Facility Two) and Rich Hill (Facility Seven) facilities mentioned in Paragraph 30.

33. On information and belief, and subject to a reasonable opportunity for further investigation or discovery, at all relevant times, MFA Inc. has operated, and continues to operate the Rock Port (Facility Two) and Rich Hill (Facility Seven) facilities mentioned in Paragraph 30.

34. The MFA facilities are “stationary sources” within the meaning of Section 112(r)(2)(C) of the Act, 42 U.S.C. § 7412(r)(2)(C).

35. At each of the MFA facilities, at all relevant times, MFA Inc. handled, stored, and used, and continues to handle, store and use, anhydrous ammonia above the threshold quantity of 10,000 pounds at the MFA facilities.

36. The MFA facilities are subject to “Program 2” requirements within the meaning of 40 C.F.R. §§ 68.10(c) and 68.12(c).

37. The MFA facilities distribute anhydrous ammonia to farmers, who inject it into the ground as fertilizer. The facilities store large amounts of anhydrous ammonia in bulk tanks and transfer it to nurse tanks. As a result, employees, the surrounding public, and the environment are at risk of exposure to this extremely hazardous substance if it is released.

38. EPA examined records that MFA Inc. produced on October 31, 2014, in response to an information request from EPA pursuant to Section 114 of the Act, 42 U.S.C. § 7414, relating to compliance with the risk management program regulations at 40 C.F.R. Part 68 (“MFA Inc.’s Section 114 response”). In these records, MFA Inc. admits that it operates all of the MFA Facilities and owns the Centralia (Facility One), Pattonsburg (Facility Three), Hale (Facility Four), Saint Joseph (Facility Five), Jefferson City (Facility Six), New Cambria (Facility Eight) and Martinsburg (Facility Nine) facilities.

39. In its most recent Risk Management Plan submissions, MFA Enterprises Inc. admits that it owns the Rock Port (Facility Two, submitted July 26, 2016) and Rich Hill (Facility Seven, submitted September 9, 2013) facilities.

40. EPA also conducted inspections at MFA facilities in Centralia, Jefferson City, Rich Hill, New Cambria, and Martinsburg, Missouri. As a result of its examination and inspections, EPA identified numerous violations of the risk management program regulations and numerous releases of anhydrous ammonia resulting in injuries.

THE FACILITIES

Centralia, Missouri – Facility One

41. On or about September 4, 2009, there was a release of anhydrous ammonia at the

1 Centralia facility.

2 42. The release of anhydrous ammonia from the Centralia facility on or about
3 September 4, 2009 constituted an “accidental release” within the meaning of Section
4 112(r)(2)(A) of the Act. 42 U.S.C. § 7412(r)(2)(A).

5 43. As a result of this release, at least one person was injured onsite.

6 44. On September 19, 2012, EPA inspected the Centralia facility. The inspector
7 noted, among other things, that MFA Inc. failed to possess accurate safety information pertaining
8 to equipment listed onsite; evaluate hazards; use proper saddles supporting bulk vessels that
9 comply with recognized and generally accepted good engineering practices; address in the
10 hazard review any steps used or needed to detect or monitor releases; resolve in a timely manner
11 corrective actions identified in the facility’s hazard review; possess standard operating
12 procedures for temporary operations and for how to use valves; and possess accurate three-year
13 audits.

14 45. On or about October 31, 2014, MFA Inc. submitted its response to EPA’s
15 information requests pursuant to Section 114 of the Act. Among other things, MFA Inc.’s
16 answers revealed nurse tanks with improperly functioning gauges and a failure to report in the
17 RMP the accidental release referred to in Paragraph 41 above. On April 27, 2015, EPA again
18 inspected the Centralia facility. The inspector noted, among other things, that MFA Inc. failed to
19 possess standard operating procedures for normal daily start up or shut down processes and for
20 filling dual nurse tanks; have up-to-date operating procedures that reference the emergency
21 equipment that the facility actually uses and clearly identify the procedure associated with the
22 equipment; describe the steps required to correct or avoid deviations in operating procedures; test
23 and replace pressure relief valves and underground piping; and write an accurate description of

1 its emergency response program.

2 Rock Port, Missouri – Facility Two

3 46. On or about April 14, 2010, there was a release of anhydrous ammonia at the
4 Rock Port facility.

5 47. The release of anhydrous ammonia from the Rock Port facility on or about April
6 14, 2010 constituted an “accidental release” within the meaning of Section 112(r)(2)(A) of the
7 Act. 42 U.S.C. § 7412(r)(2)(A).

8 48. As a result of this release, at least one person was injured onsite.

9 49. On or about October 31, 2014, MFA Inc. responded to EPA’s information
10 request. Among other things, MFA Inc.’s answers revealed its failure to report the accidental
11 release within six months of its occurrence and to include any mention of the accidental release
12 that resulted in on-site injuries in the five year accident history section of the RMP submitted on
13 July 18, 2014.

14 Pattonsburg, Missouri – Facility Three

15 50. On or about May 6, 2010, there was a release of anhydrous ammonia at the
16 Pattonsburg facility.

17 51. The release of anhydrous ammonia from the Pattonsburg facility on or about May
18 6, 2010 constituted an “accidental release” within the meaning of Section 112(r)(2)(A) of the
19 Act. 42 U.S.C. § 7412(r)(2)(A).

20 52. As a result of this release, at least one person was injured onsite.

21 53. Among other things, MFA Inc.’s Section 114 response revealed a failure to report
22 in the RMP an accidental release from a process that resulted in on-site injuries at the
23 Pattonsburg facility.

1 Hale, Missouri – Facility Four

2 54. On or about January 18, 2012, there was a release of anhydrous ammonia at the
3 Hale facility.

4 55. The release of anhydrous ammonia from the Hale facility on or about January 18,
5 2012 constituted an “accidental release” within the meaning of Section 112(r)(2)(A) of the Act.
6 42 U.S.C. § 7412(r)(2)(A).

7 56. As a result of this release, at least one person was injured onsite.

8 57. Among other things, MFA Inc.’s Section 114 response revealed a failure to report
9 in the RMP an accidental release from a process that resulted in on-site injuries at the Hale
10 facility.

11 St. Joseph, Missouri – Facility Five

12 58. On or about March 24, 2014, there was a release of anhydrous ammonia at the St.
13 Joseph facility.

14 59. The release of anhydrous ammonia from the St. Joseph facility on or about March
15 24, 2014 constituted an “accidental release” within the meaning of Section 112(r)(2)(A) of the
16 Act. 42 U.S.C. § 7412(r)(2)(A).

17 60. As a result of this release, at least one person was injured onsite.

18 61. Among other things, MFA Inc.’s Section 114 response revealed a failure to report
19 in the RMP an accidental release from a process that resulted in on-site injuries at the St. Joseph
20 facility. Its response also revealed a failure to ensure that employees are trained to operate
21 valves.

22 Jefferson City, Missouri – Facility Six

23 62. On September 12, 2012, EPA inspected the Jefferson City facility. The inspector

1 noted, among other things, that MFA Inc. failed to maintain adequate equipment specifications to
2 determine safe upper and lower flow limits; properly maintain bulk storage vessels in a way that
3 complied with recognized and generally accepted good engineering practices; and conduct a
4 compliance audit every three years.

5 Rich Hill, Missouri – Facility Seven

6 63. On September 25, 2012, EPA inspected the Rich Hill facility. The inspector
7 noted, among other things, that Defendants failed to include any consequences of deviation
8 within its standard operating procedures.

9 64. On April 1, 2015, EPA again inspected the Rich Hill facility. The inspector
10 noted, among other things, that Defendants failed to use proper equipment, including vehicle
11 barriers, a bulk tank saddle, nurse tank, and emergency water containers that complied with
12 recognized and generally accepted good engineering practices. The inspector also noted that
13 Defendants failed to recognize the hazard of underground piping in the facility hazard review;
14 possess standard operating procedures that contain accurate information on safety procedures;
15 replace pressure relief valves and hoses in compliance with industry standards; and accurately
16 describe the facility's emergency response and facility coordinator within its RMP.

17 New Cambria, Missouri – Facility Eight

18 65. On November 14-15, 2012, EPA inspected the New Cambria facility. The
19 inspector noted, among other things, that MFA Inc. failed to use proper equipment that complied
20 with recognized and generally accepted good engineering practices, including piping that would
21 trigger excess flow valves; recognize the hazard of a nearby highway in its hazard review;
22 identify safeguards including properly functioning excess flow valves in its hazard review;
23 identify any steps used or needed to detect or monitor releases in the hazard review; replace

1 pressure relief valves in compliance with industry standards; and improperly certified its three-
2 year audits.

3 Martinsburg, Missouri – Facility Nine

4 66. On December 12, 2012, EPA inspected the Martinsburg facility. The inspector
5 noted, among other things, that MFA Inc. failed to resolve in a timely manner corrective actions
6 identified in the facility's hazard review and develop a report of audit findings and document the
7 responses to the audit and deficiencies corrected.

8 67. On April 28, 2015, EPA again inspected the Martinsburg facility. The inspector
9 noted, among other things, that MFA Inc. again failed to properly address the findings of a
10 compliance audit. EPA also noted that MFA Inc. failed to recognize the hazard of underground
11 piping; possess standard operating procedures for normal daily start up and shut down processes;
12 describe the steps required to correct or avoid deviations in operating procedures; replace
13 pressure relief valves, vapor hoses, and hydrostatic relief valves in compliance with industry
14 standards; and accurately describe the facility's emergency response in its RMP.

15 **FIRST CLAIM FOR RELIEF**

16 Failure to Implement a Risk Management Program that Complies with 40 C.F.R. Part 68
17 at the Centralia Facility (against MFA Inc.)

18 68. Paragraphs 1 through 67 are incorporated herein by reference.

19 69. MFA Inc. is subject to the requirements of Section 112(r) of the Clean Air Act, 42
20 U.S.C. § 7412(r), and the regulations at 40 C.F.R. Part 68, with respect to the Centralia facility.

21 70. Beginning on April 7, 2010, MFA Inc. violated numerous federal CAA
22 requirements promulgated under Section 112 and codified at 40 C.F.R. Part 68 at the Centralia
23 facility, which violations are set forth in Exhibit 1, Table 1 attached to this Complaint and hereby
24 incorporated into this Paragraph.

25 71. Each failure to comply with the requirements of 40 C.F.R. Part 68 constitutes a

violation of Section 112(r)(7) of the Act.

72. On information and belief, and subject to a reasonable opportunity for further investigation or discovery, Defendant's CAA violations at the Centralia facility continue or continued during the time period provided in Exhibit 1, Table 1.

73. MFA Inc. is liable for injunctive relief and the assessment of civil penalties in an amount up to the level set forth at 40 C.F.R. § 19.4 per day for each violation of Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7). The maximum civil penalty per day per violation of the CAA is \$37,500 for violations occurring after January 12, 2009 and on or before November 2, 2015, and effective January 16, 2018, \$97,229 per day per violation of the CAA for violations occurring after November 2, 2015.

SECOND CLAIM FOR RELIEF

Failure to Implement a Risk Management Program that Complies with 40 C.F.R. Part 68 at the Rock Port Facility (against MFA Inc. and MFA Enterprises, Inc.)

74. Paragraphs 1 through 67 are incorporated herein by reference.

75. Defendants are subject to the requirements of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), and the regulations at 40 C.F.R. Part 68, with respect to the Rock Port facility.

76. Beginning on July 18, 2014, Defendants violated federal CAA requirements promulgated under Section 112 and codified at 40 C.F.R. Part 68 at the Rock Port facility, which violations are set forth in Exhibit 1, Table 2 attached to this Complaint and hereby incorporated into this Paragraph.

77. Each failure to comply with the requirements of 40 C.F.R. Part 68 constitutes a violation of Section 112(r)(7) of the Act.

78. Defendants are liable for injunctive relief and the assessment of civil penalties in an amount up to the level set forth at 40 C.F.R. § 19.4 per day for each violation of Section

1 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7). The maximum civil penalty per day per violation of
2 the CAA is \$37,500 for violations occurring after January 12, 2009 and on or before November
3 2, 2015, and effective January 16, 2018, \$97,229 per day per violation of the CAA for violations
4 occurring after November 2, 2015.

5 **THIRD CLAIM FOR RELIEF**

6 Failure to Implement a Risk Management Program that Complies with 40 C.F.R. Part 68
7 at the Pattonsburg Facility (against MFA Inc.)

8 79. Paragraphs 1 through 67 are incorporated herein by reference.

9 80. MFA Inc. is subject to the requirements of Section 112(r) of the Clean Air Act, 42
10 U.S.C. § 7412(r), and the regulations at 40 C.F.R. Part 68, with respect to the Pattonsburg
11 facility.

12 81. Beginning on March 8, 2011, MFA Inc. violated a federal CAA requirement
13 promulgated under Section 112 and codified at 40 C.F.R. Part 68 at the Pattonsburg facility
14 which is set forth in Exhibit 1, Table 3 attached to this Complaint and hereby incorporated into
15 this Paragraph.

16 82. MFA Inc.'s failure to comply with the requirements of 40 C.F.R. Part 68
17 constitutes a violation of Section 112(r)(7) of the Act.

18 83. MFA Inc. is liable for injunctive relief and the assessment of civil penalties in an
19 amount up to the level set forth at 40 C.F.R. § 19.4 per day for each violation of Section
20 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7). The maximum civil penalty per day per violation of
21 the CAA is \$37,500 for violations occurring after January 12, 2009 and on or before November
22 2, 2015, and effective January 16, 2018, \$97,229 per day per violation of the CAA for violations
23 occurring after November 2, 2015.

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Failure to Implement a Risk Management Program that Complies with 40 C.F.R. Part 68
at the Hale Facility (against MFA Inc.)

84. Paragraphs 1 through 67 are incorporated herein by reference.

85. MFA Inc. is subject to the requirements of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), and the regulations at 40 C.F.R. Part 68, with respect to the Hale facility.

86. Beginning on March 19, 2012, MFA Inc. violated a federal CAA requirement promulgated under Section 112 and codified at 40 C.F.R. Part 68 at the Hale facility, which violation is set forth in Exhibit 1, Table 4 attached to this Complaint and hereby incorporated into this Paragraph.

87. MFA, Inc.'s failure to comply with the requirements of 40 C.F.R. Part 68 constitutes a violation of Section 112(r)(7) of the Act.

88. MFA Inc. is liable for injunctive relief and the assessment of civil penalties in an amount up to the level set forth at 40 C.F.R. § 19.4 per day for each violation of Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7). The maximum civil penalty per day per violation of the CAA is \$37,500 for violations occurring after January 12, 2009 and on or before November 2, 2015, and effective January 16, 2018, \$97,229 per day per violation of the CAA for violations occurring after November 2, 2015.

FIFTH CLAIM FOR RELIEF

Failure to Implement a Risk Management Program that Complies with 40 C.F.R. Part 68
at the St. Joseph Facility (against MFA Inc.)

89. Paragraphs 1 through 67 are incorporated herein by reference.

90. MFA Inc. is subject to the requirements of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), and the regulations at 40 C.F.R. Part 68, with respect to the St. Joseph facility.

91. Beginning on March 24, 2014, MFA Inc. violated federal CAA requirements promulgated under Section 112 and codified at 40 C.F.R. Part 68 at the Saint Joseph facility,

1 which violations are set forth in Exhibit 1, Table 5 attached to this Complaint and hereby
2 incorporated into this Paragraph.

3 92. Each of MFA Inc.'s failures to comply with the requirements of 40 C.F.R. Part
4 68 constitutes a violation of Section 112(r)(7) of the Act.

5 93. MFA Inc. is liable for injunctive relief and the assessment of civil penalties in an
6 amount up to the level set forth at 40 C.F.R. § 19.4 per day for each violation of Section
7 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7). The maximum civil penalty per day per violation of
8 the CAA is \$37,500 for violations occurring after January 12, 2009 and on or before November
9 2, 2015, and effective January 16, 2018, \$97,229 per day per violation of the CAA for violations
10 occurring after November 2, 2015.

11 **SIXTH CLAIM FOR RELIEF**

12 Failure to Implement a Risk Management Program that Complies with 40 C.F.R. Part 68
13 at the Jefferson City Facility (against MFA Inc.)

14 94. Paragraphs 1 through 67 are incorporated herein by reference.

15 95. MFA Inc. is subject to the requirements of Section 112(r) of the Clean Air Act, 42
16 U.S.C. § 7412(r), and the regulations at 40 C.F.R. Part 68, with respect to the Jefferson City
17 facility.

18 96. Beginning on June 26, 2011, MFA Inc. violated numerous federal CAA
19 requirements promulgated under Section 112 and codified at 40 C.F.R. Part 68 at the Jefferson
20 City facility, which violations are set forth in Exhibit 1, Table 6 attached to this Complaint and
21 hereby incorporated into this Paragraph.

22 97. Each of MFA Inc.'s failures to comply with the requirements of 40 C.F.R. Part 68
23 constitutes a violation of Section 112(r)(7) of the Act.

24 98. On information and belief, and subject to a reasonable opportunity for further
25 investigation or discovery, Defendant's CAA violations at the Jefferson City facility continue or

continued during the time period provided in Exhibit 1 Table 6.

99. MFA Inc. is liable for injunctive relief and the assessment of civil penalties in an amount up to the level set forth at 40 C.F.R. § 19.4 per day for each violation of Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7). The maximum civil penalty per day per violation of the CAA is \$37,500 for violations occurring after January 12, 2009 and on or before November 2, 2015, and effective January 16, 2018, \$97,229 per day per violation of the CAA for violations occurring after November 2, 2015.

SEVENTH CLAIM FOR RELIEF

Failure to Implement a Risk Management Program that Complies with 40 C.F.R. Part 68 at the Rich Hill Facility (against MFA Inc. and MFA Enterprises, Inc.)

100. Paragraphs 1 through 67 are incorporated herein by reference.

101. Defendants are subject to the requirements of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), and the regulations at 40 C.F.R. Part 68, with respect to the Rich Hill facility.

102. Beginning on July 28, 2011, Defendants violated numerous federal CAA requirements promulgated under Section 112 and codified at 40 C.F.R. Part 68 at the Rich Hill facility, which violations are set forth in Exhibit 1, Table 7 attached to this Complaint and hereby incorporated into this Paragraph.

103. Each of Defendants' failures to comply with the requirements of 40 C.F.R. Part 68 constitutes a violation of Section 112(r)(7) of the Act.

104. On information and belief, and subject to a reasonable opportunity for further investigation or discovery, Defendants' CAA violations at the Rich Hill facility continue or continued during the time period provided in Exhibit 1, Table 7.

105. Defendants are liable for injunctive relief and the assessment of civil penalties in an amount up to the level set forth at 40 C.F.R. § 19.4 per day for each violation of Section

1 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7). The maximum civil penalty per day per violation of
2 the CAA is \$37,500 for violations occurring after January 12, 2009 and on or before November
3 2, 2015, and effective January 16, 2018, \$97,229 per day per violation of the CAA for violations
4 occurring after November 2, 2015.

5 **EIGHTH CLAIM FOR RELIEF**

6 Failure to Implement a Risk Management Program that Complies with 40 C.F.R. Part 68
7 at the New Cambria Facility (against MFA Inc.)

8 106. Paragraphs 1 through 67 are incorporated herein by reference.

9 107. MFA Inc. is subject to the requirements of Section 112(r) of the Clean Air Act, 42
10 U.S.C. § 7412(r), and the regulations at 40 C.F.R. Part 68, with respect to the New Cambria
11 facility.

12 108. Beginning on March 24, 2010, MFA Inc. violated numerous federal CAA
13 requirements promulgated under Section 112 and codified at 40 C.F.R. Part 68 at the New
14 Cambria facility, which violations are set forth in Exhibit 1, Table 8 attached to this Complaint
15 and hereby incorporated into this Paragraph.

16 109. Each of MFA Inc.'s failures to comply with the requirements of 40 C.F.R. Part 68
17 constitutes a violation of Section 112(r)(7) of the Act.

18 110. On information and belief, and subject to a reasonable opportunity for further
19 investigation or discovery, Defendant's CAA violations at the New Cambria facility continue or
20 continued during the time period provided in Exhibit 1, Table 8.

21 111. MFA Inc. is liable for injunctive relief and the assessment of civil penalties in an
22 amount up to the level set forth at 40 C.F.R. § 19.4 per day for each violation of Section
23 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7). The maximum civil penalty per day per violation of
24 the CAA is \$37,500 for violations occurring after January 12, 2009 and on or before November
25 2, 2015, and effective January 16, 2018, \$97,229 per day per violation of the CAA for violations

1 occurring after November 2, 2015.

2 **NINTH CLAIM FOR RELIEF**

3 Failure to Implement a Risk Management Program that Complies with 40 C.F.R. Part 68
4 at the Martinsburg Facility (against MFA Inc.)

5 112. Paragraphs 1 through 67 are incorporated herein by reference.

6 113. MFA Inc. is subject to the requirements of Section 112(r) of the Clean Air Act, 42
7 U.S.C. § 7412(r), and the regulations at 40 C.F.R. Part 68, with respect to the Martinsburg
8 facility.

9 114. Beginning on or before May 31, 2010, MFA Inc. violated numerous federal CAA
10 requirements promulgated under Section 112 and codified at 40 C.F.R. Part 68 at the
11 Martinsburg facility, which violations are set forth in Exhibit 1, Table 9 attached to this
12 Complaint and hereby incorporated into this Paragraph.

13 115. Each of MFA Inc.'s failures to comply with the requirements of 40 C.F.R. Part 68
14 constitutes a violation of Section 112(r)(7) of the Act.

15 116. On information and belief, and subject to a reasonable opportunity for further
16 investigation or discovery, Defendant's CAA violations at the Martinsburg facility continue or
17 continued during the time period provided in Exhibit 1 Table 9.

18 117. MFA Inc. is liable for injunctive relief and the assessment of civil penalties in an
19 amount up to the level set forth at 40 C.F.R. § 19.4 per day for each violation of Section
20 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7). The maximum civil penalty per day, per violation,
21 for each violation of the CAA is \$37,500 for violations occurring after January 12, 2009 and on
22 or before November 2, 2015, and effective January 16, 2018, \$97,229 per day, per violation, for
23 each violation of the CAA for violations occurring after November 2, 2015.

1 PRAYER FOR RELIEF

2 WHEREFORE, Plaintiff, the United States of America, respectfully requests that this
3 Court:

4 A. Order Defendants MFA Incorporated and MFA Enterprises, Incorporated to
5 immediately comply with the Clean Air Act statutory and regulatory requirements cited in this
6 Complaint, pursuant to Section 113(b) of the Act;

7 B. Assess civil penalties against Defendants MFA Incorporated and MFA
8 Enterprises, Incorporated in an amount up to \$37,500 per day, per violation, for each violation of
9 Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7) occurring on or before November 2, 2015,
10 and in an amount up to \$97,229 for each violation occurring after November 2, 2015;

11 C. Impose such injunctive relief on Defendants MFA Incorporated and MFA
12 Enterprises, Incorporated as may be appropriate to mitigate the effects of Defendants' violations,
13 and prevent any future violations;

14 D. Award the United States its costs and expenses incurred in this action; and

15 E. Grant such other relief and further relief as this Court may deem appropriate.

16 Respectfully submitted,

17
18 JEFFREY H. WOOD
19 Acting Assistant Attorney General
20 Environment and Natural Resources Division
21 United States Department of Justice
22

23
24 /s/ Peter Krzywicki
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JS 44 (Rev 09/10)

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI****CIVIL COVER SHEET**

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Western District of Missouri.

The completed cover sheet must be saved as a pdf document and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s):**First Listed Plaintiff:**

United States of America ;

County of Residence: Outside This District**Defendant(s):****First Listed Defendant:**

MFA Incorporated ;

County of Residence: Boone County**Additional Defendants(s):**

MFA Enterprises Incorporated ;

County Where Claim For Relief Arose: Boone County**Plaintiff's Attorney(s):**

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Basis of Jurisdiction: 1. U.S. Government Plaintiff

Citizenship of Principal Parties (Diversity Cases Only)**Plaintiff:** N/A**Defendant:** N/A**Origin:** 1. Original Proceeding**Nature of Suit:** 893 Environmental Matters

Cause of Action: This civil action is brought pursuant to Section 113(b)(2) of the Clean Air Act, 42 U.S.C. § 7413(b)(2), against MFA Inc. and MFA Enterprises, Inc. for their violations of Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7).

Requested in Complaint**Class Action:** Not filed as a Class Action**Monetary Demand (in Thousands):****Jury Demand:** No**Related Cases:** Is NOT a refiling of a previously dismissed action

Signature: Peter Krzywicki**Date:** 7/2/2018

If any of this information is incorrect, please close this window and go back to the Civil Cover Sheet Input form to make the correction and generate the updated JS44. Once corrected, print this form, sign and date it, and submit it with your new civil action.